

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS, JANUARY 1, 1966,
TO JUNE 30, 1966

IN THE MATTER OF

POWERNAIL COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-1028. Complaint, Jan. 7, 1966—Decision, Jan. 7, 1966

Consent order requiring an Illinois manufacturer and distributor of power nailing equipment and nails which are used in the installation of flooring and sheathing to cease using coercive, intimidating, and harassing tactics to force their retail customers to maintain fixed resale prices for respondents' products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (U.S.C., Title 15, Sec. 45), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in respect thereto as follows:

PARAGRAPH 1. Respondent Powernail Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its main office and place of business in Prairie View, Illinois. It is now and at all times hereinafter mentioned has been the sole or exclusive distributor of patented machines and nails, respectively termed "powernailers" and "powercleats," which are used in the installation of various types of flooring and sheathing. The Powernail Company sells such products to approximately 5,000 dealers located in various States of the United States and the sales of such products are substantial.

PAR. 2. The EPA Manufacturing Company, is a limited partnership organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located on the same premises as that occupied by respondent Powernail Company. The EPA Manufacturing Company is now, and at all times hereinafter mentioned, has been engaged in the business of manufacturing the aforementioned patented machines and nails which it sells to its sole or exclusive distributor, Powernail Company.

Respondent Edgar P. Anstett is the sole general partner of the EPA Manufacturing Company and is president of Powernail Company, and at all times mentioned herein has been primarily responsible in the formation, direction and control of the policies, practices and acts of the EPA Manufacturing Company and Powernail Company as hereinafter referred to.

PAR. 3. In the course and conduct of respondents' businesses, there has been at all times mentioned herein, and is now, a continuous and current movement of said machines and nails in interstate commerce, as "commerce" is defined by the Federal Trade Commission Act.

PAR. 4. The Powernail Company and EPA Manufacturing Company now, and at all times mentioned herein, have been in competition with other individuals, partnerships, corporations or firms engaged in the manufacture, distribution and sale of such flooring, sheathing and nailing equipment in interstate commerce except to the extent that such competition has been hindered, lessened, restricted, restrained and eliminated by the unlawful acts and practices hereinafter alleged. The aforementioned Powernail equipment has for the past several years achieved acceptance by flooring contractors, carpenters and other users thereof to such an extent that respondents have obtained a dominant position amounting to a virtual monopoly in the manufacture, distribution and sale of such flooring, sheathing and nailing equipment in the United States.

PAR. 5. For the several years last past, respondents have adopted and employed and still employ in the Milwaukee, Wisconsin area, and other areas of the United States, a system of establishing resale prices for Powernail products, which prices respondents required and still require Powernail dealers to observe as the respective resale prices to be charged by such dealers in reselling said products to the purchasers thereof.

PAR. 6. In order to carry out the said plan or policy, and to se-

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cure the cooperation therein of dealers generally, and in the Milwaukee, Wisconsin area in particular, respondents adopted and employed and still employ the following among other means by which respondents and those cooperating with them have undertaken to prevent and have prevented other dealers from selling said products at prices other than the said resale prices so established by respondents:

(a) They issue resale price lists and dealer discount lists to the trade in which the various resale prices for said products are set forth and explained;

(b) They make it generally known to the trade by letters and salesmen's interviews, and other means, that they expect and require dealers handling Powernail products to maintain and enforce said resale prices or such dealerships will be terminated;

(c) They enter into informal agreements, understandings and arrangements with such dealers that as a condition of opening accounts for such dealers said resale prices are required to be maintained;

(d) They invite, procure and solicit from dealers handling Powernail products, cooperation in submitting reports as to the failure of other dealers to observe and maintain said resale prices;

(e) They invite, procure and solicit from dealers handling Powernail products, assistance and cooperation in ascertaining information pertaining to any dealers who resell such products to discontinued dealers or any other persons, firms or organizations which fail to maintain such resale prices;

(f) They direct Powernail salesmen and other employees to secure information as to dealers who fail to observe said resale prices;

(g) They use information received through Powernail salesmen, employees and dealers to induce and coerce such dealers as have failed to observe said resale prices to maintain the same in the future by exacting promises, assurances or agreements from them to that effect;

(h) They threaten to refuse and do refuse to sell Powernail products to dealers failing to observe and maintain said resale prices;

(i) They favor dealers who maintain said prices against competing dealers who fail to observe the same;

(j) They employ Powernail salesmen and others to submit call reports which are placed in the appropriate ledger accounts of

such dealers informing respondents of all instances in which dealers handling Powernail products have failed to observe and maintain said resale prices;

(k) They have placed and still place inspection slips containing serial numbers in all orders filled for such dealers and have used and still use such serial numbers for the purpose, among others, of tracing sales made at below said resale prices;

(l) They have used and now use other equivalent cooperative means and methods for the enforcement of said system of resale prices; all with the result that said prices have been and are generally observed and maintained by dealers handling Powernail products.

PAR. 7. The above acts and practices have had and still have the capacity, tendency and effect of hindering, suppressing or eliminating competition between or among all dealers handling Powernail products to resell the same at prices fixed by respondents as aforesaid; such practices prevent dealers from selling these products at the prices they deem to be warranted; such practices have the capacity, tendency and effect to hinder and suppress all price competition in the resale of such products in various localities, including the Milwaukee, Wisconsin area, among others, thus tending to obstruct their free and natural flow of commerce in such products and the freedom of competition in this channel of interstate commerce.

PAR. 8. The aforesaid acts and practices of the respondents have the tendency to unduly hinder competition and have injured, hindered, suppressed, lessened or eliminated actual and potential competition, and thus are to the prejudice and injury of the public, constitute unfair methods of competition in commerce or unfair acts and practices in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in

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the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Powernail Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its main office and principal place of business located in Prairie View, Illinois.

EPA Manufacturing Company is a limited partnership organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located on the same premises as that occupied by respondent Powernail Company, its exclusive distributor.

Respondent Edgar P. Anstett is the sole general partner of the EPA Manufacturing Company and is also president of Powernail Company. His address is the same as that of said companies.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I. *It is ordered*, that respondents Powernail Company, a corporation, and Edgar P. Anstett, individually, trading and doing business as EPA Manufacturing Company, and their officers, agents, representatives, employees, successors and assigns, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of nailing equipment, including but not limited to that used in connection with flooring and sheathing, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from hindering, suppressing, or eliminating competition, or attempting to hinder, suppress or eliminate competition between or among dealers handling respondents' nailing equipment by:

1. Requiring purchasers or prospective purchasers to agree that they will resell at prices specified by respondents, or that they will not resell below or above such specified prices: *Provided, however*, That upon proper showing by res-

pondents that there are other commodities of the same general class produced by others in free and open competition with respondents' nailing equipment, the Commission will consider the terms of this Order in the light of such conditions;

2. Utilizing Powernail salesmen, or any other agents, representatives or employees, directly or indirectly, as part of any plan or program for maintaining resale prices, to report dealers who do not observe such suggested resale prices, or to act on reports so obtained by refusing or threatening to refuse sales to dealers so reported;

3. Harassing, intimidating, and coercing dealers into observing and maintaining resale prices;

4. Harassing, intimidating, coercing or threatening to refuse or refusing to sell Powernail products to dealers for failure to observe and maintain the resale prices;

5. Requesting dealers, either directly or through Powernail salesmen, agents, representatives or employees, to report any persons or firms who do not observe the resale prices suggested by respondents, or acting on reports so obtained by refusing or threatening to refuse sales to dealers so reported;

6. Requiring from dealers charged with price-cutting, promises or assurances of the observance of respondents' resale prices as a condition precedent to future sales to said dealers;

7. Refusing or failing to reinstate any former dealer terminated for reason, in whole or in part, of his past pricing practices, where such dealer requests reinstatement pursuant to the provisions of Paragraph III, *infra*, of this Order;

8. Utilizing any other cooperative means of accomplishing the maintenance of resale prices fixed by respondents for their products.

II. *It is further ordered*, That the respondents herein shall within sixty (60) days after service upon them of this Order, serve by mail a copy of this Order on all dealers of Powernail products.

III. *It is further ordered*, That the respondents herein shall: (1) Within sixty (60) days after service upon them of this Order: (a) send each dealer terminated since January 1, 1960, a letter advising him that he may apply within thirty (30) days from receipt of that letter for reinstatement as a Powernail

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dealer; and (b) submit to the Commission a list of all dealers terminated since January 1, 1960; and, further that

(2) Within one hundred and twenty (120) days after service upon them of this Order: (a) submit to the Commission a list of all dealers who have been reinstated since service upon respondents of this Order; and (b) submit to the Commission a list of all dealers who have not been reinstated and the reason or reasons therefor.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this Order.

IN THE MATTER OF

I & S FUR COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-1029. Complaint, Jan. 10, 1966—Decision, Jan. 10, 1966

Consent order requiring a New York City manufacturer of fur products to cease misbranding, deceptively invoicing, and falsely guaranteeing their furs in violation of the Fur Products Labeling Act.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that I & S Fur Company, Inc., a corporation, and Abraham Salzman, Ruben Salzman and Abraham Topkin, individually and as officers of the said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent I & S Fur Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents are manufacturers of fur products with their office and principal place of business located at 115 West 29th Street, New York, New York.

Respondents Abraham Salzman, Ruben Salzman and Abraham Topkin, as officers of the corporate respondent, formulate, direct and control the acts, practices and policies of the said corporate respondent including those hereinafter set forth.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale in commerce, and in the transportation and distribution in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of furs which have been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled to show that fur contained therein was natural, when in fact, such fur was pointed, bleached, dyed, tip-dyed, or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely or deceptively identified with respect to the name of the country of origin of furs contained in such fur products, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were fur products covered by invoices which failed to show the true animal name of the fur used in the fur product.

PAR. 6. Respondents furnished false guaranties that certain of their said fur products were not misbranded, falsely invoiced or falsely advertised when respondents in furnishing such guaranties had reason to believe that fur products so falsely guaranteed would be introduced, sold, transported or distributed in

commerce, in violation of Section 10(b) of the Fur Products Labeling Act.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent I & S Fur Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 115 West 29th Street, New York, New York.

Respondents Abraham Salzman, Ruben Salzman and Abraham Topkin, are officers of the corporate respondent and their address is the same as that of said corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

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ORDER

It is ordered, That respondents I & S Fur Company, Inc., a corporation, and its officers, and Abraham Salzman, Ruben Salzman and Abraham Topkin, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Representing directly or by implication on labels that the fur contained in any fur product is natural when the fur contained therein is bleached, dyed, tipped or otherwise artificially colored.
2. Falsely or deceptively labeling or otherwise identifying any such fur product as to the country of origin of furs contained in such fur product.

B. Falsely or deceptively invoicing fur products by failing to furnish invoices, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed in each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

It is further ordered, That I & S Fur Company, Inc., a corporation, and its officers, and Abraham Salzman, Ruben Salzman and Abraham Topkin, individually and as officers of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any fur product is not misbranded, falsely invoiced, or falsely advertised when the respondents had reason to believe that such product may be introduced, sold, transported, or distributed in commerce.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

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IN THE MATTER OF

MARTIN MARIETTA CORPORATION

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 8280. Complaint, Jan. 27, 1961—Decision, Jan. 12, 1966

Order modifying a Commission consent order of divestiture dated March 12, 1963, 62 F.T.C. 834, by deleting from the list of properties to be divested the Greystone, North Carolina, quarry.

ORDER GRANTING IN PART, AND DENYING IN PART, APPLICATION
FOR MODIFICATION OF ORDER TO CEASE AND DESIST

Respondent, by an application filed September 23, 1964, supplemented by material filed March 1, 1965, and December 23, 1965, having requested the Commission to modify the consent order to cease and desist, issued March 12, 1963 [62 F.T.C. 834], by deleting eight quarries and quarry sites from the list of properties ordered to be divested by respondent; and the Commission, having fully considered said application and having concluded that there has been no showing made that changed conditions of fact or law or the public interest warrant modification of the order to cease and desist, except as hereinafter provided:

It is ordered, That respondent's application be, and it hereby is, granted in part, by deleting the Greystone, North Carolina, quarry from the properties required to be divested by respondent, listed in the order to cease and desist, issued March 12, 1963.

It is further ordered, That in all other respects respondent's application be, and it hereby is, denied.

IN THE MATTER OF

BEST PRODUCTS COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-1080. Complaint, Jan. 12, 1966—Decision, Jan. 12, 1966

Consent order requiring a Richmond, Va., dealer in miscellaneous merchandise to cease misrepresenting by means of catalogue advertisements that it is a wholesaler and sells at wholesale prices.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Best Products Company, Inc., a corporation, and Sydney Lewis, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Best Products Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 4909-13 West Marshall Street, in the city of Richmond, State of Virginia.

Respondent Sydney Lewis is an individual and officer of the said corporate respondent. He formulates, directs and controls the policies, acts and practices of said corporate respondent, including those hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents have been, and are now, engaged in the advertising, offering for sale, sale and distribution of various articles of merchandise including jewelry, watches, silverware, cameras, kitchen utensils, household appliances, toys and sporting goods to retailers and to members of the consuming public.

PAR. 3. Respondents now cause, and for some time last past have caused, their said merchandise, when sold, to be shipped

from their place of business in the State of Virginia to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondents, in the course and conduct of their business, and for the purpose of inducing the purchase of their merchandise, have advertised the same by means of catalogs, disseminated by and through the United States mails to prospective purchasers located in various States other than the State of Virginia.

Among and typical, but not all inclusive, of the statements appearing in respondents' catalog are the following:

THE BEST BUYERS BOOK
WHOLESALE CATALOG

Confidential

HOW TO FIND
YOUR WHOLESALE COST

Your wholesale cost is hidden in the stock number that appears with each item. The figures at the right end of the stock number represent your wholesale cost as per example below:

EXAMPLE

1218-C1204 ----- \$17.95

OUR STOCK NO.	YOUR COST \$12.04	RETAIL PRICE
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BEST PRODUCTS CO., INC. • Wholesale Distributors •

BEST'S SALES POLICY
WE SELL WHOLESALE ONLY

PAR. 5. Respondents, for each article of merchandise described in their catalog set forth two prices, one, a so-called coded price which is their selling price; and the other, a higher price, purported to be the "retail price." By means of such pricing methods, the aforesaid quoted statements, and other of similar import but not specifically set out herein, respondents represent, directly or by implication: (1) that they are wholesalers or wholesale distributors; (2) that they sell all of their merchandise at wholesale prices and that the so-called coded price is the wholesale price of each article of merchandise.

PAR. 6. In truth and in fact: (1) respondents are not wholesalers or wholesale distributors; (2) they do not sell all such articles of merchandise at wholesale prices and the so-called coded selling price is not the wholesale price of each article of merchandise but is substantially in excess thereof.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. At all times mentioned herein respondents have been, and are in substantial competition, in commerce, with corporations, firms and individuals in the sale of merchandise of the same general kind and nature as that sold by respondents.

PAR. 8. The use by respondents of the aforementioned false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were, and are, true, and into the purchase of substantial quantities of respondents' products because of said mistaken and erroneous belief.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Best Products Company, Inc., is a corporation organized, existing and doing business under and by virtue of the

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laws of the State of Virginia with its office and principal place of business located at 4909-13 West Marshall Street, in the city of Richmond, State of Virginia.

Respondent Sydney Lewis is an officer of said corporation, and his address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Best Products Company, Inc., a corporation, and its officers, and Sydney Lewis, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of jewelry, watches, silverware, cameras, kitchen utensils, household appliances, toys, sporting goods, or any other merchandise to the ultimate consumer in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "wholesale" or "wholesale distributor" or any other word or words of similar import as descriptive of respondents' business or otherwise representing that respondents are wholesalers or wholesale distributors.

2. Using the words "wholesale," "wholesale cost" or any other term of similar import as descriptive of a selling price or representing directly or by implication that merchandise is being offered for sale at a wholesale price: *Provided, however,* That it shall be a defense in any enforcement proceeding instituted hereunder for respondents to establish that the price so described or referred to is the wholesale price in the trade area or areas where the representation is made.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

